ATTORNEY FOR APPELLANT:

**MICHAEL ALLEN**
Allen & Troemel
Indianapolis, Indiana

ATTORNEY FOR APPELLEE:

**WILLIAM T. ROSENBAUM**
Hyatt & Rosenbaum, P.A.
Indianapolis, Indiana

# IN THE COURT OF APPEALS OF INDIANA

| | | |
|---|---|---|
| THOMAS STRITTMATTER, | ) | |
| | ) | |
| Appellant-Defendant, | ) | |
| | ) | |
| vs. | ) | No. 49A02-0606-CV-530 |
| | ) | |
| THE SPINNAKER COVE HOMEOWNERS ASSOCIATION, INC., | ) | |
| | ) | |
| Appellee-Plaintiff. | ) | |

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Christopher Baker, Judge Pro Tempore
Cause No. 49D01-9911-CP-1660

**June 22, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BAKER, Chief Judge**

Appellant-defendant J. Thomas Strittmatter appeals from the trial court's order directing him to permit appellee-plaintiff The Spinnaker Cove Homeowners Association, Inc. (the Association), to replace his unauthorized patio door at the Association's expense, to remove his unauthorized window and return the building to its original condition at Strittmatter's expense, and to pay the Association's attorney fees and costs. In particular, Strittmatter contends that the trial court erroneously concluded that the contractor who performed the renovations did not have apparent authority to act as the Association's agent and consent to the projects. Finding no error, we affirm the judgment of the trial court.

FACTS

Spinnaker Cove is a residential community on the northeast side of Indianapolis. It is governed by a Declaration of Covenants and Restrictions (the Covenants), which created the Association—a nonprofit corporation that serves as the governing body of the community. One of the Association's responsibilities is to maintain architectural conformity throughout the community for the benefit of individual owners and to preserve property values. The Association is also responsible for maintaining the common areas and building structures, including exterior building walls, roofs, and patio doors. Strittmatter owns a home in the Spinnaker Cove community and, at various times, has served on the Board of Directors and the Architectural Review Board.

In 1999, Strittmatter installed skylights in his Spinnaker Cove condominium without first receiving approval from the Association. The Association filed a motion for preliminary injunction and, on February 16, 2000, the trial court entered an agreed order, which noted

that Strittmatter "has agreed that he will not make any changes to the exterior of his residence or to the grounds surrounding his residence, without first having obtained the approval of [the Association] or until further order of this Court . . . ." Appellant's App. p. 9. At the hearing in the instant matter, it was determined that the February 16, 2000, order merged into the final order when the case eventually settled.

In 2005, the Association was in the process of replacing the siding on buildings throughout the Spinnaker Cove community. The Board of Directors had hired a contractor to perform this work.

Strittmatter had first discussed the possibility of installing a new window in the side wall of his residence with Steve Schmutte, the Spinnaker Cove property manager, before the siding work had begun. Schmutte informed Strittmatter that only the Association could approve that project.

After the siding work commenced, Strittmatter talked to one of the construction workers who was working on the building in which his residence was located. Strittmatter discussed the possibility of hiring the construction worker and his employer, the siding contractor, to install a new patio door and new window in Strittmatter's residence. The patio door was to replace an existing, rotting door and the window was to be installed where there had previously been a solid wall. The construction worker confirmed with his supervisor that they could do the work and provided to Strittmatter, in writing, that the contractor "has the authority to install said improvements & is so authorized . . . ." Appellant's App. p. 14.

Strittmatter did not receive—or request—permission from the Association to make these improvements to his residence. The work was completed sometime in August 2005.

On October 17, 2005, the Association filed a rule to show cause why Strittmatter should not be held in contempt for violating the February 16, 2000, order requiring him to obtain permission from the Association before making any changes to the exterior of his residence.[1] The trial court held a hearing on the Association's petition on December 27, 2005, and entered judgment in favor of the Association on January 23, 2006. Among other things, the trial court found and ordered as follows:

> Based upon the evidence, the court believes there are two separate issues for consideration, those being the replacement door and secondly, the window. . . . The testimony at the hearing was undisputed that the door needed to be replaced. The management company for [the Association] was aware that the door needed to be replaced and communicated that fact to [Strittmatter]. However, there was no prior written approval from the Architectural Review Board. Prior written approval clearly is required for alterations . . . . [T]he door is of a different style than those throughout the community and is an alteration of the exterior of the building.
>
> The window provides a slightly different issue. That alteration also requires prior written approval and there is no credible evidence that the Architectural Review Board or any other entity of Spinnaker Cove provided prior written approval.
>
> The court finds that [the written statement of the siding contractor] is not sufficient to bind the Architectural Review Board or [the Association] or satisfy the prior written approval requirement in the covenants.

---

[1] Although the instant litigation was designated proceedings supplemental and was nominally a rule to show cause relating to the February 16, 2000, order, the trial court seems to have treated it as separate, distinct litigation. Thus, although the trial court entered judgment for the Association in this case, it did not find that Strittmatter acted in contempt of the prior order, presumably because, as noted above, that order merged into the final settlement order in the earlier litigation.

[Strittmatter] testified that he wanted to make sure both changes were acceptable and communicated that to the representative of [the contractor]. However, there is no evidence [that Strittmatter] personally ever communicated to the [Association] about the window prior to making the change.

***

The court, having found a violation of the [C]ovenants, determines that the only reasonable remedy in order to keep uniformity among the structures is for the door to be replaced and for the window to be removed, the structure repaired and restored to its original condition and siding replaced.

***

. . . The court having found there to be a violation of the [C]ovenants, further awards the plaintiff its reasonable attorney's fees in a sum to be determined.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the court that [Strittmatter] shall permit [the Association] or its authorized contractor or agent, to:

1. Replace the patio door . . . at the sole cost and expense of the [Association]. . . .

2. Remove the window which [Strittmatter] installed and restore the building to it's [sic] original condition. The [Association] shall not be responsible for any repair or restoration to the interior of the residence.

***

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the [Association] shall tender to the court and [Strittmatter] invoices for the cost of removing the window and repairing the exterior of the building. [Strittmatter] shall have fifteen (15) days within which to tender any objection, after which time the court will enter a monetary judgment including an award for attorney fees.

Appellant's App. p. 5-7. Strittmatter now appeals.

## DISCUSSION AND DECISION

## I. Standard of Review

The trial court herein entered findings of fact and conclusions of law sua sponte. When the trial court enters such findings sua sponte, the specific findings control only as to the issues they cover, while a general judgment standard applies to any issues upon which the court has not found. Therefore, in reviewing this judgment, we apply a two-tiered standard of review. First, we determine whether the evidence supports the findings and second, whether the findings support the judgment. In deference to the trial court's proximity to the issues, we will reverse a judgment only when it is shown to be clearly erroneous—when the judgment is unsupported by the findings of fact and conclusions entered on the findings. In re Estate of Powers, 849 N.E.2d 1212, 1216 (Ind. Ct. App. 2006).

For findings of fact to be clearly erroneous, the record must lack probative evidence or reasonable inferences that may be drawn therefrom to support them. In determining the validity of the findings or judgment, we consider only the evidence favorable to the judgment and all reasonable inferences to be drawn therefrom, and we will not reweigh the evidence or assess the credibility of witnesses. Although we defer substantially to the trial court's findings of fact, we do not do so as to its conclusions of law. Rather, we evaluate questions of law de novo and owe no deference to a trial court's determinations of such questions. Id.

## II. Authority

Strittmatter first takes issue with the trial court's conclusion that he was required to obtain permission from the Architectural Review Board to begin the installation of the patio door and window, emphasizing that the Architectural Review Board no longer exists. Even if we accept that as true, however, Strittmatter does not deny that he was required to obtain permission from someone to begin the projects, nor does he deny that the Covenants are valid and enforceable. He merely insists that his conversations with the siding contractor sufficed.

To determine whether Strittmatter's conversations and contract with the contractor were sufficient to comply with his obligations under the Covenants, we must consider whether the contractor had authority to approve the projects on the Association's behalf. In determining whether a person is acting as an agent, our Supreme Court has recognized three classifications of authority: (1) actual authority; (2) apparent authority; and (3) inherent authority. Gallant Ins. Co. v. Isaac, 751 N.E.2d 672, 675 (Ind. 2001). Authority can be express or implied and may be conferred by words or other conduct, including acquiescence. Koval v. Simon Telelect, Inc., 693 N.E.2d 1299, 1302 (Ind. 1998). Initially, we observe that the contractor did not have actual authority to approve Strittmatter's projects on behalf of the Association. [2]

[2] Strittmatter emphasizes that the construction workers informed him that they had to replace his rotting patio door to complete the siding replacement. Additionally, as noted by the trial court, the Association's management company had informed Strittmatter that the door needed to be replaced. It would be fair to infer, therefore, that the contractor had the Association's actual authority to conclude that the patio door needed to be replaced, inasmuch as it directly related to the contractor's ability to do the job for which it was hired. But Strittmatter was certainly required to seek approval of the style of the replacement door itself. Moreover, we note that the trial court ordered that the patio door be removed and replaced with one in compliance with the

Apparent authority refers to a third party's reasonable belief that the principal has authorized the acts of its agent. State Farm Mut. Auto. Ins. Co. v. Noble, 854 N.E.2d 925, 931 (Ind. Ct. App. 2006), trans. denied. It arises from the principal's indirect or direct manifestations to a third party and not from the representations or acts of the agent. Id. In other words, apparent authority stems only from the words and actions of the principal, not the agent. Id. at 932.

Here, there is no evidence in the record that the Association, as the alleged principal, made any statements or took any actions that could have led Strittmatter to believe that the contractor was authorized to approve the projects. Indeed, there is no evidence in the record that the Association was even aware of Strittmatter's renovations until they were already completed. Moreover, Strittmatter was well aware that he was obliged to seek approval from the Association for these projects, inasmuch as he served time on the Board of Directors and the Architectural Review Board, had been a party to previous litigation with the Association surrounding this precise issue, and had sought approval for previous renovation projects. There is no evidence that the Association has ever led Strittmatter to believe that a siding contractor had the authority to approve renovations on its behalf. Consequently, we find that the contractor did not have apparent authority to act as the Association's agent in this matter.

Inherent authority, on the other hand, is grounded in neither the principal's conduct toward the agent nor the principal's representation to a third party, but, rather, in the very

---

architectural standards of the community at the Association's expense, acknowledging that Strittmatter reasonably concluded that the Association had authorized the project. We find that to be a fair outcome.

status of the agent. Gallant, 751 N.E.2d at 675-76. The concept of inherent authority "'originates from the customary authority of a person in the particular type of agency relationship.'" Id. (quoting Menard, Inc. v. Dage-MTI, Inc., 726 N.E.2d 1206, 1210 (Ind. 2000)). An agent with inherent authority is a person with a particular status, such as the president of a corporation. Gallant, 751 N.E.2d at 675-76. Inherent authority does not apply to "lower-tiered employee[s] or a prototypical 'general' or 'special' agent, with respect to whom actual or apparent authority might be at issue." Menard, 726 N.E.2d at 1212.[3]

Here, the person with whom Strittmatter dealt was an employee of the contractor—someone who was onsite to renovate the community's siding. It is evident that this is precisely the type of "lower-tiered employee" to whom the concept of inherent authority simply does not apply. Id. Consequently, the trial court properly concluded that the contractor did not have authority to consent on the Association's behalf to the renovation of Strittmatter's patio door or the installation of the window.

The judgment of the trial court is affirmed.

FRIEDLANDER, J., and CRONE, J., concur.

[3] The acts of an agent with inherent authority only bind the principal where (1) the acts done are those which usually accompany or are incidental to transactions that the agent is authorized to conduct if, although they are forbidden by the principal, (2) the other party reasonably believes that the agent is authorized to do them, and (3) the other party has no notice that he is not so authorized. Menard, 726 N.E.2d at 1212. Even if this concept of authority did apply herein, therefore, it would be of no help to Strittmatter, inasmuch as, given his history with Spinnaker Cove, he cannot establish that he held a reasonable belief that the contractor was authorized to consent to the projects.